

COLLABORATIVE LAW – CARLETON COUNTY LAW ASSOCIATION UPDATE

Eastern Ontario's first collaborative Family Practice training took place on February 24th and 25th, 2001. This two-day process training was given by Calgary's Judge Michael Porter (Retired). We filled our attendance requirements of 30 fledgling devotees of this new brand of mainstream practice. This new solicitor-client relationship training in collaborative family law (CFL) will be repeated for members of the local Bar that wish to find out more about this lawyer facilitated ADR process. Also, we are providing other training opportunities in interest based negotiation with a view of consolidating a preferred standard of practice and skills around the first generation of lawyers in the Ontario Collaborative Law Network.

These training resources are necessary to re-tool us with the required skills and mindset to be better family lawyers providing cost-effective services to our clients and the general public. Collaborative Family Practice has flourished in many jurisdictions across the continent. We know CFL works and our group has been designed as a practical yet advanced practice system known as the "Ottawa Model". As and when our hearts and minds embrace this collaborative framework, we are in treated to an efficient and enriching professional practice.

To set the stage, collaborative family practice has emerged as the third dispute resolution option for families in the divorce and separation experience - the other processes being litigation and mediation. And like its closest neighbor mediation, it's fundamental characteristic integrate non-adversarial and cooperative strategies. Moreover, consistent with other ADR process, the CFL model is energized by the empowerment of our own clients as informed decision makers.

For in collaborative practice the clients themselves conduct settlement negotiations with the lawyers "by their sides" so that client ownership of the process is combined with legal protection. To accommodate these negotiations, greater use than usual is made of 4-way meetings. However, there is a fundamental difference. The lawyers, instead of dominating the process, act as advisors to the clients and when they do negotiate they stopped short of taking control from the clients.

The new solicitor-client relationship remains traditional in the sense that the dynamic is rooted in a client-centered approach with the lawyer serving as a resource. This resource informs the process. In addition, the lawyer serves to model a highly effective interest-based negotiator. This Dynamic is fostered in the context of safe and secure structures organized to develop preferred options reflecting maximum and mutual gain in negotiations theory. Unlike independent legal advice in mediation as an external legal adjunct, this lawyer is integrally involved in the formation and facilitation of advanced negotiations.

And we emergent collaborative law lawyers will use the new skills developed in ADR to reach wise and durable settlements. This is the great benefit of mediation as informing and nurturing the collaborative family practice. But mark you, Rule 25 lawyers as mediators does not apply. Collaborative family practice is Law and law is for lawyers.

The Law Society and Law Pro focus on that lawyer-client relationship in the specifically structured contract between the lawyer and the client known as the Participation Agreement. There is a fundamental duty to practice law in existence although the application is knowingly and therefore validly referenced to settlement as opposed to litigation. We are well past any philosophical challenge in discharging our ethical and primordial duties to our clients in doing our best for them. And liberated from the shadow of the win-lose matrix in litigation, our probability for success within win-win thinking is maximized. Simply put, we can consistently do a better job on a level playing field or, dare I say, advanced plateau.

It is understood that if settlement is not reached, the lawyers must withdraw, and neither they nor any member of their firms may represent the clients in subsequent litigation. This is to ensure that there is total commitment to the settlement frame of reference. Some people criticize this termination as a weakness but it is a core strength and value in this process to facilitate shift. And as we've heard - shift happens.

The basic steps of the process start with an assessment of the clients' needs. Mike Porter commented, "who the client is and what the client wants is all that matters". We look for consistencies and inconsistencies with their three-model choice while we frame our informed recommendations concerning mediation, collaborative law or litigation having regard to the clients' specific needs and vision for their families' transition.

Lawyers fulfill a necessary function in collaborative practice by activating their significant yet limited role as legal advisors, problem solvers, process managers and negotiation coaches. Don't bother going back to law school. You won't find it there...yet. You may also get a sense of this additional necessity for advanced interpersonal and negotiation skills when you remember that adversarial techniques to advance the negotiations, such as court connected intimidation are unavailable. That's right, you are waiting under the dueling oak without your derringer. Other means of persuasion must be utilized and in collaborative practice, to quote Jim MacDonald, Q.C. "the means of persuasion swing 180 degrees to adopt cooperative strategies".

CFL lawyers interact with each other and their clients in ways and means consistent with conflict reduction, settlement based negotiation and effective communication. We proactively organize joint agendas and integrated critical planning which accelerates our clients control over their process far from the maddening litigation crowd. This is simply intended as a comparative observation particularly in light of the statutory reasoning behind case or settlement conferences (i.e. 1. disclosure; 2. strategic planning; 3. settlement). CFL lawyers promote mutual disclosure and joint planning as essential steps to comprehensive settlement so that "catch me if you can" case conference dance is all tapped out. There is no need for any thought of court for the process of disclosure or planning and the idea of going to court for settlement is presumably as cost-effective as buying a 747 airplane just for the peanuts.

The process advances through the groundwork of client preparation and lawyer to lawyer conferences to the summit of the four-party settlement conference. At this juncture, there is sufficient information, advanced preconditioning and commitment to transmute the facilitated negotiation into a wise, durable and comprehensive agreement. Throughout the whole process, we have avoided confrontation tactics and intimidating demands. The method reverts to values and works with people's insight into their changes and growth as individuals in transition.

Families undergoing the divorce and separation experience do not need and cannot bear the additional stress and cost of litigation's blame frame. Of course, not every case is a fit for CFL. However, many people would benefit from taking mutual charge of their transition issues and getting their simple interest into joint problem solving within an appropriate dispute resolution process. Similarly, despite best intentions there may be contradictions to a mediation referral. Collaborative law constitutes a common-sense portal to people working through their own destiny with sufficient professional resources. Indeed, the significant majority of separating couples may

come to choose this balanced approach as their most attractive next step. Hence, collaborative law represents a new and important bearing in ADR's manifest destiny.

By nature, CFL lawyers reject the adversarial leverage, distributive thinking and emotional bitterness that is endemic in litigation. The CFL process requires professional non-enmeshment, integrated thinking and cooperative strategies predicated on empowered efficient settlements and new working relationships. Some litigators think that they practice this way already. We invite you to continue your self-reflection and open up to CFL trainings and our network protocols to enhance your natural abilities with new learning opportunities. However, comparing litigations cooperative strategies with a remarkably dissimilar CFL principles and process understates collaborative law's phenomenal growth, attraction and potential. It's like assessing the productive capacity of the computer age on the ability to email. So, Surf's Up - go for the next wave of collaborative law training. For more information on the Ottawa Collaborative Law Network, visit....www.collaborative-law.ca

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